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BOOK REVIEWS

CONTRACTS IN ENGINEERING. BY JAMES IRWIN TUCKER. New York: McGraw-Hill Book Company. 1920. pp. xii, 331.

He who undertakes to state the law for a particular profession, industry, craft or class, undertakes an impossible task. The law is general and not special.

The member of a particular profession, craft or class, or engaged in a particular industry or commercial pursuit, who essays to act as his own lawyer is like the man who attempts to act as his own doctor. The old maxim designates sufficiently and accurately the mental equipment of the client.

The difficulty which is met at the threshold of an attempt to state the law peculiarly applicable to contracts of a particular profession, craft or class, is the difficulty of picking out from the law of contracts those principles which have that exclusive and particular applicability. There is no such set of principles. The principles of contract law are applicable to all contracts and all the principles of contract law are applicable to the particular class of contracts. "Engineering contracts," which is the subject of the volume under consideration, are no different from other contracts in this respect.

The danger involved in submitting to the engineering profession a "work" of this kind is that the members of the profession may be induced to rely upon it for their law in connection with the making and performance of contracts. If this be not the purpose of the "work" then it has no purpose; and if it be the purpose it is likely to prove disastrous to the profession whose members are invited to rely upon it. And this is so, not because such a book might contain erroneous statement of principles of law, but because it is certain that those untrained in knowledge and study of the law would not understand the principles when thus stated and, if they did understand them, might, and probably would, assume that the principles stated in connection with a particular phase of an engineering contract were exhaustive and complete, whereas it would be just as possibly the case, indeed it would be very probably the case, that there were other principles equally applicable which the engineer, acting as his own lawyer, would overlook or disregard because he would not be versed in the whole body of the law of contracts relating to his subject matter. In a word, there is no good office to be performed by a book of this kind, because it cannot be safely followed save by one who has thoroughly mastered the book and, assuming for the moment that the book is thorough and exhaustive upon the subject of the law of contracts, then he might just as well have studied the law of contracts in some other book or books which deal with the subject of the law of contracts generally and not particularly with the law of "Contracts in Engineering."

This book is written as well and as accurately as could be done by one who had devoted his time and attention as much, or more, to the science of engineering as to the science of law. It is analytical, it is orderly, it is very thorough within the lines of its self-imposed limitations, and it is conscientiously and earnestly done. If the thing can be done at all, this book would be an illustration of the way in which it should be done. The trouble is that the undertaking started with false premises, to-wit: the premises that there was any contract law particularly applicable to the science of engineering and that, if there were, it could be successfully segregated from the whole body of contract law. The author recognizes to some extent the difficulty, not to say the impossibility, of his task and very wisely states at the outset of his preface that:

"he has been warned and has striven against leading the reader or student to infer that the service of legal counsel might be easily dispensed with. The aim has been to enable the engineer to cooperate efficiently with lawyers, and to appreciate more perfectly the need for their assistance."

If this be the purpose of the book, then it would have been better or at least as well accomplished if the instructor in the engineering course had warned his students that they had better let the law of their subject alone and commit their difficulties in that regard to the care of some competent practitioner.

It is a wise admonition that everyone should stick to his own trade or profession.

The book purports not only to contain "The law in a nutshell" as regards contracts, but deals also quite extensively, in chapter 4, with "Agency, Tort and Independent Contractor"; in chapter 5, with "Real Property"; in chapter 6, with "Contracts of Association—Corporation"; in chapter 7, with "Contracts of Sale and Transportation," which involves a consideration of "Conditional Sales" and of "Carriers."

One cannot resist the implied argument, forced upon his attention by reading this book, that every business and professional man should study law. There is very much to be said for that proposition. A thorough course of legal education would not only accomplish the better mental discipline of those who should take it, but would enable them to realize the dangers from a legal point of view of the contracts into which they might enter and a performance of the same, and would equip them to provide in advance for the contingencies which might arise. Of course, the reason why every business and professional man does not take a thorough course in law is that there is usually insufficient time for it in the career of the ordinary man. Again, it cannot be argued, from the proposition that every business and professional man should take a thorough course in the study of law, that, therefore, the study of a fragment of the law very speedily and incidentally pursued would be of some value. "A little knowledge is a dangerous thing," for many reasons, not the least of which is that it is apt to induce the possessor of it to believe that it is quite sufficient and adequate for the occasion.

The author says, in his "Introduction," that:

"To properly treat of the engineer's duties it is necessary to deal somewhat with the principles of Agency, Tort and of Real Property, since these bear an intimate relation to his work entirely aside from his rights and obligations arising out of contracts generally."

And all this he does in a work which has but 331 pages, 32 pages of which are given over to "Appendix Notes" and "Index." It may not be unsafe to assume that within that limited space it would be very difficult, if not impossible, to give a comprehensive view of the various branches of the law to which reference is thus made.

It was to be expected that in this book, as it must be expected in connection with any such book attempting to briefly summarize, condense the law on a specific subject, and confine its applicability to a particular pursuit, there would be errors and misleading statements. Reference may be made to two or three of them.

Whether anyone would get an idea as to the nature of the contract or be able to tell whether a contract actually existed in any particular set of circumstances from the definition of a contract given in section 17 of this work is, perhaps, not difficult to say. The definition is:

"A contract is an agreement between competent parties, enforceable at law, whereby each acquires a right to what is promised by the other."

In other words, the attempt is made to define a contract by stating what

will be the result of a contract if you have one. Definitions are, of course, difficult and should be avoided as far as may be, but perhaps the worst form of unscientific definition is the form which states the results instead of the nature of the thing and the elements which compose it.

The attempted definition of "consideration" in section 36 is not only misleading,—it is erroneous. The definition is:

"Consideration is the act or forbearance of one party which is given in exchange for the act or promise of the other."

Obviously, if an act or forbearance of one party is given for the act of another party, there is no contract at all. It is simply an exchange. This definition is given in bold large type. In a note following it, in small type, there is given a partially correct definition of "consideration" which, if it had been expanded and had been made the definition for the main part of the text, would have answered the purpose. This instance is cited simply as showing how misleading a treatise may be and how dangerous it may be in the hands of those who use it innocently.

Again, in section 39, consisting of ten lines, a complete disposition of the subject of the performance of, or a promise to perform a contract obligation as a consideration for a new promise, is purported to be given. The statement of the author carries with it the implication that the law is uniform and settled in every jurisdiction, the fact being that the law on this subject is different in different jurisdictions and involves a good many collateral points which are summarily ignored in the statement.

Again, referring to a contract to drill a well 3000 feet deep, the author says that if, after the contractor has drilled 2500 feet, he meets unexpected and extraordinary difficulties, he may recover for the work done if he can prove that performance is impossible by any methods ordinarily used. Such a proposition would not stand the test of the law as it actually exists nor indeed as it should exist as a matter of sound principle.

Nevertheless, it should be said that a very earnest attempt has been made to put together in succinct form the outstanding principles of the law of contracts (to say nothing of the incidental treatment of corporation, real estate and tort law), and if this subject of contracts were taught in an engineering school by someone familiar with the entire subject of the law of contracts quite apart from the book, so that he might use the book as a basis, correcting and amplifying its statements, where there might be necessity, and giving ample time to the subject, there might be a valuable office performed by this work. For other purposes, the value of the work does not so clearly appear.

Perhaps the best comment upon a work of this kind, and one which carries with it the most emphatic of warnings, is the very language of the author of the work under consideration, at the bottom of page 28. He says:

"It should always be borne in mind, however, that in the eye of the law engineering contracts are no different from any other business agreements."

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THE FOUNDATIONS OF SOCIAL SCIENCE, An Analysis of Their Psychological Aspects. By JAMES MICKEL WILLIAMS. New York: ALFRED A. KNOPP. 1920. pp. xvi, 494.

This is one of the two or three substantial books that get written in a generation. By this I mean that it not only contains ideas (a score or more of books